

J. J. ROSS, Appellant, vs. G. W. GUSSEFELD, Agent for A. Woermann, Appellee.

LRSC 2; 1 LLR 199

[January Term, A. D. 1886.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Debt.

1. Protest on bills before a notary applies to foreign bills and is evidence of demand and non-payment; it does not apply to inland bills.
2. It is error for a court in expounding written evidence to extend its exposition beyond the contents of the instrument.

This is an appeal from the proceedings and judgment of the Court of Quarter Sessions, Sinoe County, at its August term, 1885. The action was brought by the appellee (plaintiff below) upon a promissory note drawn by the appellant, in favor of one A. Miller, for the sum of five hundred dollars, who afterwards endorsed and transferred the same to plaintiff below.

At the trial the plaintiff aforesaid obtained judgment for the sum specified in the note, from which judgment, and other proceedings, exceptions were taken, and upon the exceptions thus taken the cause is brought up for review.

The exceptions taken are:--1, To the court's ruling against a plea of abatement, in which it was urged that the action ought to abate, because the note upon which it is founded, being endorsed over to plaintiff, was subject to the rule respecting inland bills of exchange, and that demand, notice and protest, before a public notary, should have been made before bringing this action. 2, To the court's refusing a new trial asked for, upon the ground that the verdict was contrary to the evidence in the case, as the defendant below did submit as evidence at the trial two receipts from the said A. Miller for the sum of two hundred dollars, of prior date to the transfer of the note in question, which should have been allowed him as a set-off to the note.

These constitute the important exceptions taken at the trial below. It does not appear by the laws governing promissory notes and inland bills of exchange, that before legal demand on account of non-payment a protest made by a notary public is required.

By the general commercial law, it is perfectly clear that the intervention of a notary public is unnecessary in these cases. The protest belongs altogether to foreign bills, and is the evidence of demand, and an indispensable step toward the legal notice of non-payment. The note under consideration must be regarded as having reference exclusively to inland bills; to them the protest has no legal binding effect, as the drawer becomes immediately liable at law, on demand and failure of payment.

The court further says that it is the duty of the judge of the Court of Quarter Sessions, on the trial of a cause before him, where written evidence is admitted, to expound to the jury the same. This is only done to make clear to the minds of the jury the facts herein contained. But expounding does not extend beyond the limits above mentioned, nor can the court supply a material fact wanted in such written evidence. Hence the court could not have, in summing up, directed the minds of the jury to the receipts as evidence of payment on the note, they failing to express the same.

Upon the whole, after a careful review of the trial below, it is the judgment of this court that the judgment of the court below is affirmed, with costs.

Key Description: Appeal and Error (Questions involving issues of fact)